

---

**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

---

**FINDINGS AND DETERMINATION OF THE COMMISSIONER  
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE  
LSA Document #12-506****DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CORRECTIONS TO THE HAZARDOUS  
WASTE RULES AT [329 IAC 3.1-1-7](#)****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to [329 IAC 3.1-1-7](#) to correct a citation to the federal hazardous waste rules. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the solid waste management board (board) for consideration of adoption of these rules.

**CITATIONS AFFECTED:** [329 IAC 3.1-1-7](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-19-3-1](#); [IC 13-22-2-4](#).

**STATUTORY REQUIREMENTS**

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the proposed rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

**BACKGROUND**

LSA Document #11-90 incorporated by reference changes to the hazardous waste rules at 40 CFR 261, Appendix IX, Table 1 describing a name change for the facility currently known as Tokusen, USA, Inc. in Scottsburg, Indiana, and typographical corrections to the delisting conditions that were published in the Federal Register on September 22, 2010, at 75 FR 57687 through 75 FR 57688. This federal rule change was incorrectly cited in the final rule for LSA Document #11-90 at [329 IAC 3.1-1-7\(a\)\(3\)](#). This rulemaking corrects that error.

**[IC 13-14-9-4](#) Identification of Restrictions and Requirements Not Imposed under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

**Potential Fiscal Impact**

This rulemaking incorporates federal changes that have already occurred and will have no economic impact

on the parties concerned.

### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Dan Watts, Rules Development Branch, Office of Legal Counsel at (317) 234-5345 or (800) 451-6027 (in Indiana).

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 234-3997  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

### **FINDINGS**

The commissioner of IDEM has prepared findings regarding rulemaking on amendments to [329 IAC 3.1-1-7](#) to correct a citation to the federal hazardous waste rules as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by federal law to adopt rules for management of hazardous waste that are equivalent to the federal hazardous waste management program as established by the U.S. Environmental Protection Agency.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, because it will make Indiana's hazardous waste management program consistent with the federal program and ensure consistent application of the delisting provisions in federal rule to the facility concerned.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the proposed rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (5) The draft rule is hereby incorporated into these findings.

---

Thomas W. Easterly  
Commissioner

## REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #12-506 (Hazardous Waste Correction)  
Janet Pittman  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
MC 65-45  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5517. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [dwatts1@idem.in.gov](mailto:dwatts1@idem.in.gov). To confirm timely delivery of your comments, please request a document receipt when you send the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking you are commenting on.

## COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than October 5, 2012. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, (317) 234-5345 or (800) 451-6027 (in Indiana).

## DRAFT RULE

SECTION 1. [329 IAC 3.1-1-7](#) IS AMENDED TO READ AS FOLLOWS:

### [329 IAC 3.1-1-7](#) Incorporation by reference

Authority: [IC 13-19-3-1](#); [IC 13-22-4](#)

Affected: [IC 13-14-8](#); 40 CFR 260.11

Sec. 7. (a) When incorporated by reference in this article, references to 40 CFR 260 through 40 CFR 270 and 40 CFR 273 shall mean the version of that publication revised as of July 1, 2008, and amended as published in the Federal Register on:

- (1) December 1, 2008, at 73 FR 72954 through 73 FR 72960;
- (2) June 15, 2010, at 75 FR 33716 through 75 FR 33724;
- (3) September 22, 2010, at ~~75 FR 75687~~ **75 FR 57687** through ~~75 FR 75688~~; **75 FR 57688**;
- (4) December 17, 2010, at 75 FR 78926; and
- (5) December 20, 2010, at 75 FR 79308.

(b) When used in 40 CFR 260 through 40 CFR 270 and 40 CFR 273, as incorporated in this article, references to federally incorporated publications shall mean that version of the publication as specified at 40 CFR 260.11.

(c) The following publications are also incorporated by reference:

- (1) 40 CFR 146, revised as of July 1, 2005.
- (2) 40 CFR 60, Appendix A-1, revised as of July 1, 2005.
- (3) 40 CFR 60, Appendix A-2, revised as of July 1, 2005.
- (4) 40 CFR 60, Appendix A-3, revised as of July 1, 2005.

- (5) 40 CFR 60, Appendix A-4, revised as of July 1, 2005.
- (6) 40 CFR 60, Appendix A-5, revised as of July 1, 2005.
- (7) 40 CFR 60, Appendix A-6, revised as of July 1, 2005.
- (8) 40 CFR 60, Appendix A-7, revised as of July 1, 2005.
- (9) 40 CFR 60, Appendix A-8, revised as of July 1, 2005.

(d) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in the incorporation citation in subsections (a) through (c). Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management.

(e) Where exceptions to incorporated federal regulations are necessary, these exceptions will be noted in the text of the rule. In addition, all references to administrative stays are deleted.

(f) Cross-references within federal regulations that have been incorporated by reference shall mean the cross-referenced provision as incorporated in this rule with any indicated additions and exceptions.

(g) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority.

*(Solid Waste Management Board; [329 IAC 3.1-1-7](#); filed Jan 24, 1992, 2:00 p.m.: 15 IR 909; filed Oct 23, 1992, 12:00 p.m.: 16 IR 848; filed May 6, 1994, 5:00 p.m.: 17 IR 2061; errata filed Nov 8, 1995, 4:00 p.m.: 19 IR 353; filed Jul 18, 1996, 3:05 p.m.: 19 IR 3353; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1111; filed Oct 31, 1997, 8:45 a.m.: 21 IR 947; filed Mar 19, 1998, 10:05 a.m.: 21 IR 2739; errata filed Apr 8, 1998, 2:50 p.m.: 21 IR 2989; filed Mar 6, 2000, 8:02 a.m.: 23 IR 1637; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; filed Apr 5, 2001, 1:29 p.m.: 24 IR 2431; errata filed Oct 15, 2001, 11:24 a.m.: 25 IR 813; filed Jun 3, 2002, 10:40 a.m.: 25 IR 3111; filed Jan 14, 2004, 3:20 p.m.: 27 IR 1874; filed Apr 13, 2005, 11:30 a.m.: 28 IR 2661; filed Jun 9, 2006, 3:40 p.m.: [20060712-IR-329050066FRA](#), eff Sep 5, 2006; filed Dec 26, 2007, 1:44 p.m.: [20080123-IR-329060556FRA](#); filed Sep 11, 2009, 2:39 p.m.: [20091007-IR-329080673FRA](#); filed Aug 27, 2010, 11:54 a.m.: [20100922-IR-329090613FRA](#); filed May 29, 2012, 3:20 p.m.: [20120627-IR-329110090FRA](#))*

#### [Notice of Public Hearing](#)

Posted: 09/05/2012 by Legislative Services Agency  
An [html](#) version of this document.